



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------|-------------|----------------------|---------------------|------------------|
| 10/534,796 | 05/12/2005 | Peter G. Klimko | 2443 US F | 1650 |
| 26356 | 7590 | 10/07/2008 | | |
| ALCON | | | | EXAMINER |
| IP LEGAL, TB4-8 | | | | FAY, ZOHREH A |
| 6201 SOUTH FREEWAY | | | ART UNIT | PAPER NUMBER |
| FORT WORTH, TX 76134 | | | 1612 | |
| | | | | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 10/07/2008 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|--------------------------------------|--------------------------------------|
| Office Action Summary | Application No. 10/534,796 | Applicant(s) KLIMKO ET AL. |
| | Examiner ZOHREH A. FAY | Art Unit 1612 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 June 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

Claims 1-3 are presented for examination.

The remarks filed on June 25, 2008 have been received and entered.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malfroy-Caine et al. (U.S. Patent 6,046,188) in view of Winkler et al. (Molecular Vision 1999) for the reasons set forth on pages 2-5 of the office action of December 28, 2007.

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant in his response argues that although, Wrinkler et al. suggest, without any data, that superoxide dismutase may be useful against macular degeneration, there were teachings in the art at the time the present application was filed that are conflicting with the teachings of Wrinkler et al. The arguments are not well taken. Applicant in his remarks argues that while both articles acknowledge the oxidative mechanism may play a role in the development of AMD, neither of references teach that superoxide can be used to treat macular degeneration. The arguments are not well taken. The fact that the references recognize that superoxide dismutase is involved in protecting against oxidative damage such as that which leads to AMD, is sufficient for a person skilled in the art to use such compounds for the treatment of AMD.

Applicant's attention is drawn to Delcourt et al. article, which indicates oxidative mechanisms may play an important role in the etiology of age related macular degeneration. Delcourt et al. indicate that our study shows that the age related eye diseases appear to be linked to the levels of high antioxidant enzymes. Malfroy-Caine teaches the use of the claimed compounds having anti-oxidant activity with not only

having superoxide dismutase activity, also having Glutathione peroxidase activity. Therefore, it would have been obvious to a person skilled in the art to use a compound having anti-oxidant activity for the treatment of conditions, such as, macular degeneration related to oxidative mechanism.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZF
/Zohreh A Fay/
Primary Examiner, Art Unit 1612